



Texas Department of Insurance

Division of Workers' Compensation

Medical Fee Dispute Resolution, MS-48

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address

TWELVE OAKS MEDICAL CENTER
c/o HOLLOWAY & GUMBERT
3701 KIRBY DRIVE, SUITE 1288
HOUSTON TX 77098-3926

Carrier's Austin Representative Box
17

MFDR Date Received
JULY 29, 2005

Respondent Name

EAST TEXAS EDUCATIONAL INS ASSN

MFDR Tracking Number

M4-05-A889-01

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary as taken from the Table of Disputed Services: "...IE's stay exceeded 23 hours; IC failed to pay per TWCC Rule 134.401(b) (1) (B). IE's stay requires reimbursement per TWCC rule 134.401(c) (6)...claim pays @ 75% of total charges as charges exceed \$40,000 stop-loss threshold...Further, services were unusually extensive based on 4 surgical operations related to IE's elbow surgery; IE failed to compensate HCP for implants.

Requestor's Supplemental Position Summary "...To date, a total of \$10,483.40 has been paid in connection with this claim... According to Rule 134.401 (c) (6), TWCC, this claim would then be reimbursed at the stop-loss rate of 75% as the total audited charges exceed the minimum stop-loss threshold of \$40,000.00...The services provided to Mr. Drastata were for treatment of his elbow, which had dislocated posteriorly, and fractured coronoid. As a result of his condition, Mr. Drastata underwent several operations summarized on the operative report as 1) right lateral collateral ligament reconstruction using the Palmaris logus tendon; 2) right radial head implant placement; 3) right capsulectomy with heterotopic ossification; and 4) right elbow dynamic hinge multi-plane fixator placement. The anesthesia records note Mr. Drastata was under anesthesia for the operations for a period of at least 6 hours. Postoperatively, the records note Mr. Drastata developed fever to 101.2 indicating possible infection...Based on the clear wording of the rules of the TWCC, the carrier is liable for an additional sum owed our client in the amount of \$26,812.04..."

Per Supplemental Position, Updated Amount in Dispute: \$26,812.04

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "...At this original submission the invoices supplied did not match up with what the requestor was billing for implants on the itemized statement. At that time the invoices that were valid were reimbursed at an amount of \$1,298.49. On 08/02/05, these charges were reconsidered and a supplemental payment of \$8,066.91 was made for the implants. We hope this resolves any disputes at hand. Enclosed you will find copies of the Alternate TWCC-62's and checks..."

Respondent's Additional Position Summary: "...The submitted documentation does not support a change to our previous response..."

Above Responses submitted by: Claims Administrative Services, Inc

Respondent's Supplemental Position Summary: "Through this we appear on behalf of the Respondent Carrier. Per the Division's recent notice, we supplement the original response to the request for dispute resolution. As set forth, the file neither reflects nor establishes the Requestor's right to payment per the stop-loss exception. Given the relatively short admission, and the complete lack of documentation by the Requestor of the types and quantities of implants actually utilized during surgery, the Carrier's past payment per the 'per diem – plus' standard, must be upheld. A zero additional payment order should issue...**The Admission At Issue Did Not Involve Unusually Costly & Unusually Extensive Services...**Carrier paid \$10,483.4. Payment rate reflects a one-day surgical admission (\$118.00) [sic], and a reasonable, if not generous, calculation of the additional payment due for implants used. In short summary, an unremarkable hospital stay...does not trigger or qualify for reimbursement per the stop-loss exception. The 'unusually extensive' element of stop loss is nowhere to be found..."

Response Submitted by: Downs♦Stanford PC

SUMMARY OF FINDINGS

| Disputed Dates | Disputed Services | Amount In Dispute | Amount Due |
|--------------------------------|-----------------------------|-------------------|------------|
| July 31 through August 1, 2004 | Inpatient Hospital Services | \$ 26,812.04 | \$0.00 |

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.305 and §133.307, 27 *Texas Register* 12282, applicable to requests filed on or after January 1, 2003, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 Texas Register 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital for the date of admission in dispute.
 - Effective July 13, 2008, the Division's rule at former 28 Tex. Admin. Code § 134.401 was repealed. The repeal adoption preamble specified, in pertinent part: "Section 134.401 will continue to apply to reimbursements related to admissions prior to March 1, 2008." 33 TexReg 5319, 5220 (July 4, 2008). Former 28 Tex. Admin. Code § 134.401(a) (1) specified, in pertinent part: "This guidelines shall become effective August 1, 1997. The Acute Care Inpatient Hospital Fee Guideline (ACIHFG) is applicable for all reasonable and medically necessary medical and/or surgical inpatient services rendered after the Effective Date of this rule in an acute care hospital to injured workers under the Texas Workers' Compensation Act." 22 TexReg 6264, 6306 (July 4, 1997).
3. The services in dispute were reduced / denied by the respondent with the following reason codes:
Explanation of Benefits
 - F – fee guideline MAR reduction
 - 480 – reimbursement based on the acute care inpatient hospital fee guideline per diem rate allowances
 - 1001 – based on the corrected billing and/or additional information/documentation now submitted by the provider, we are recommending further payment to be made for the above noted procedure code (278)
 - Note – based on the admit/discharge dates and times these services were performed on an inpatient basis and therefore are being reimbursed based n the acute care inpatient fee guidelines per diem rate
 - O – denial after reconsideration
 - 282 – the insurance company is reducing or denying payment after reconsidering a bill
 - Note – per rule 134.401 C 6 II, "stop loss is to ensure compensation for unusually extensive services." No doc has been submitted to support these types of services and the implants being paid at fair and reasonable (cost + 10%), brought the total below 40,000.

Issues

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

Findings

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of Division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 Texas Register 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 South Western Reporter Third 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services.” Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed by the requestor and respondent to date will be considered in determining whether the admission in dispute is eligible for reimbursement under the stop-loss method of payment. Consistent with the Third Court of Appeals' November 13, 2008 opinion, the division will address whether the total audited charges **in this case** exceed \$40,000; whether the admission and disputed services **in this case** are unusually extensive; and whether the admission and disputed services **in this case** are unusually costly. 28 Texas Administrative Code §134.401(c)(2)(C) states, in pertinent part, that “Independent reimbursement is allowed on a case-by-case basis if the particular case exceeds the stop-loss threshold as described in paragraph (6) of this subsection.” 28 Texas Administrative Code §134.401(c) (6) puts forth the requirements to meet the three factors that will be discussed.

1. 28 Texas Administrative Code §134.401(c) (6) (A) (i) states “to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold.” Furthermore, (A) (v) of that same section states “Audited charges are those charges which remain after a bill review by the insurance carrier has been performed.” Review of the explanation of benefits issued by the carrier finds that the carrier did not deduct any charges in accordance with §134.401(c) (6) (A) (v); therefore the audited charges equal \$49,727.25. The division concludes that the total audited charges exceed \$40,000.
2. The requestor in its original position statement asserts that “The services provided to Mr. Drastata were for treatment of his elbow, which had dislocated posteriorly, and fractured coronoid. As a result of his condition, Mr. Drastata underwent several operations summarized on the operative report as 1) right lateral collateral ligament reconstruction using the Palmaris logus tendon; 2) right radial head implant placement; 3) right capsulectomy with heterotopic ossification; and 4) right elbow dynamic hinge multi-plane fixator placement. The anesthesia records note Mr. Drastata was under anesthesia for the operations for a period of at least 6 hours. Postoperatively, the records note Mr. Drastata developed fever to 101.2 indicating possible infection.” The requestor asserts that it is entitled to the stop loss method of payment. As noted above, the Third Court of Appeals in its November 13, 2008 opinion concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services.” The requestor failed to demonstrate that the particulars of the admission in dispute constitute unusually extensive services compared to similar services or admissions; therefore, the division finds that the requestor did not meet 28 TAC §134.401(c)(6).
3. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds \$40,000, the stop loss method of payment should apply. The Third Court of Appeals' November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The requestor failed to demonstrate that the particulars of the admission in dispute constitutes unusually costly services; therefore, the division finds that the requestor failed to meet 28 Texas Administrative Code §134.401(c) (6).
4. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code

§134.401(c) (1) titled *Standard Per Diem Amount* and §134.401(c) (4) titled *Additional Reimbursements*. The division notes that additional reimbursements under §134.401(c) (4) apply only to bills that do not reach the stop-loss threshold described in subsection (c) (6) of this section.

- Review of the submitted documentation finds that the services provided were surgical; therefore the standard per diem amount of \$1,118.00 per day applies. Division rule at 28 Texas Administrative Code §134.401(c) (3) (ii) states, in pertinent part, that “The applicable Workers’ Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission.” The length of stay was one day. The surgical per diem rate of \$1,118.00 multiplied by the length of stay of one day results in an allowable amount of \$1,118.00.
- 28 Texas Administrative Code §134.401(c) (4) (A), states “When medically necessary the following services indicated by revenue codes shall be reimbursed at cost to the hospital plus 10%: (i) Implantables (revenue codes 275, 276, and 278), and (ii) Orthotics and prosthetics (revenue code 274).” Review of the requestor’s medical bill finds that the following items were billed under revenue code 278 and are therefore eligible for separate payment under §134.401(c)(4)(A):

| Item Code | Itemized Statement Description | Cost Invoice Description | UNITS / Cost Per Unit | Total Cost | Cost + 10% |
|-----------------|--------------------------------|--|-----------------------------|------------|------------|
| 81389991 | Apex pin | Apex trfxg pin 3mmx200l smo | 1 @ \$92 | \$92 | \$101.20 |
| | BPLR rdl head | Inv submitted does not support this item | 1 | NA | NA |
| | DJD body | DJD II body | 1 @ \$1456 | \$1456 | \$1601.60 |
| | Pin to rod | Cmpct pin to rod coupling | 2 @ \$233 | \$466 | \$512.60 |
| | Rod coupling | Cmpct rod to rod coupling | 2 @ \$233 | \$466 | \$512.60 |
| | Stem D.6,5 | Inv submitted does not support this item | 1 | NA | NA |
| | 2.7mm drill | Cann. 2.7mm twist drill w/ A | 1 @ \$235 | \$235 | \$258.50 |
| | 3mm pin caps | 3mm protective tip caps bro | 1 @ \$37 | \$37 | \$40.70 |
| | 3x110mm pin | 3x110 apex s/d half pin 25 | 2 @ \$55 | \$110 | \$121.00 |
| | 4mm pin caps | 4mm protective tip caps whi | 1 @ \$37 | \$37 | \$40.70 |
| | 4x150mm pin | Mod half pin 4x150 40 cont | 2 @ \$70 | \$140 | \$154.00 |
| 81315202 | Cemt bn | Endurance bone cement 4 G | 1 @ \$115 | \$115 | \$126.50 |
| 81336349 | Pin Steinman II | PFCsteinmn pin/drill pak | 2 billed; inv for 1 @ \$215 | \$215 | \$236.50 |
| TOTAL ALLOWABLE | | | | \$3705.90 | |

- 28 Texas Administrative Code §134.401(c) (4) (C) states “Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time.” A review of the submitted itemized statement finds that the requestor billed \$251.00/unit for Kanamycin 1 GM. The requestor did not submit documentation to support what the cost to the hospital was for this item billed under revenue code 250. For that reason, reimbursement for this item cannot be recommended.

The division concludes that the total allowable for this admission is \$1,118.00 + \$3,705.90 for a total of \$4,823.90. The respondent issued payment in the amount of \$10,483.40. Based upon the documentation submitted, no additional reimbursement can be recommended.

Conclusion

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c) (1) titled *Standard Per Diem Amount* and §134.401(c) (4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

Signature

Medical Fee Dispute Resolution

Date April , 2013

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.